

**Belvedere:**  
*Bruce Sams*

May 27, 2004

**Corte Madera:**  
*Melissa Gill*

**TO:** Transportation Authority of Marin Commissioners

**Fairfax:**  
*Lew Tremaine*

**RE:** Draft Ballot Language; First Reading of Transactions and Use Tax Ordinance by Title Only and Schedule Merit Hearing for June 24, 2004 – Agenda Item 6.a

**Larkspur:**  
*Joan Lundstrom*

Dear Commissioners:

**Mill Valley:**  
*Dick Swanson*

Attached for your review and discussion is a proposed draft of a Transactions and Use Tax Ordinance, which would adopt the Final Transportation Sales Tax Expenditure Plan, impose a one-half of one percent retail transactions and use tax, and authorize the issuance of limited tax bonds to finance transportation improvements of the plan. Included in Section 14 of the draft ordinance is proposed language for the ballot measure for your review, which is limited to 75 words pursuant to California Elections Code Section 13247(a).

**Novato:**  
*Pat Eklund*

**Ross:**  
*Tom Byrnes*

If the Board of Supervisors and a majority of the cities and towns representing the majority of the incorporated population of Marin approve the Expenditure Plan as required by Public Utilities Code Section 180206(b), TAM will consider adoption of this ordinance at the June 24<sup>th</sup> meeting.

**San Rafael:**  
*Al Boro*

Pursuant to Public Utilities Code Section 180201, the ordinance requests the Board of Supervisors to call for a special election to be held on November 2, 2004 and submit a measure to the voters of Marin County for their approval which would, if so approved, authorize TAM to impose a one-half of one percent transactions and use tax for a period of twenty years and authorize TAM to issue limited tax bonds to finance the transportation improvements set forth in the Expenditure Plan.

**Sausalito:**  
*Amy Belser*

**Tiburon:**  
*Alice Fredericks*

**County of Marin:**  
*Susan Adams*  
*Hal Brown*  
*Steve Kinsey*  
*Cynthia Murray*  
*Annette Rose*

### **Recommendation**

Staff recommends that TAM: (1) review and discuss the draft ballot measure language and Transactions and Use Tax Ordinance and provide direction to staff; and (2) request the Executive Director to read the ordinance by title only and schedule a merit hearing for June 24, 2004.

Respectfully Submitted,

Craig Tackabery  
Executive Director

Attachment:

1. Draft Ordinance No. 2004-02 Adopting the Final Plan, Imposing a Retail Transactions and Use Tax, and Authorizing Issuance of Limited Tax Bonds

f:/CMA/Staff Reports/Final Plan Ordinance 1.doc

# TRANSPORTATION AUTHORITY OF MARIN

## ORDINANCE 2004-01

### **AN ORDINANCE OF THE TRANSPORTATION AUTHORITY OF MARIN ADOPTING THE MARIN COUNTY TRANSPORTATION SALES TAX EXPENDITURE PLAN, IMPOSING A ONE-HALF OF ONE PERCENT RETAIL TRANSACTIONS AND USE TAX, AUTHORIZING THE ISSUANCE OF LIMITED TAX BONDS TO FINANCE TRANSPORTATION IMPROVEMENTS OF THE PLAN, AND SETTING AN ANNUAL APPROPRIATIONS LIMIT OF \$50 MILLION**

#### **SECTION 1. FINDINGS**

Whereas the Transportation Authority of Marin ("TAM") does hereby find and declare the following:

- I. On March 2, 2004, the Marin County Board of Supervisors ("Board of Supervisors") created TAM by Resolution No. 2004-21, pursuant to Section 180050 of the California Public Utilities Code ("PUC"). As required by California PUC Section 180051(a) and California Government Code Section 65089(a), a majority of City and Town Councils of Marin County, representing a majority of the incorporated population of Marin, have concurred on the membership of TAM and designated TAM as the Congestion Management Agency for Marin County.
- II. Pursuant to California PUC Section 180206(a), TAM approved a Final Transportation Sales Tax Expenditure Plan ("Expenditure Plan") on May 6, 2004 to present to the Board of Supervisors and Marin City and Town Councils for approval. As required by California PUC Section 180206(b), the Board of Supervisors and a majority of the City and Town Councils representing a majority of the incorporated population of Marin approved the Expenditure Plan. Therefore, TAM can now adopt the Expenditure Plan and adopt a retail transactions and use tax ordinance that requests the Board of Supervisors to place a one-half cent retail and transactions use tax measure to finance the Expenditure Plan on the November 2, 2004 ballot for consideration by the Marin electorate pursuant to California PUC Section 180201. Being a special tax, the ballot measure would require 2/3-voter approval in order to pass.
- III. The Expenditure Plan has been shaped by more than four years of planning and outreach, including recent, extensive feedback from all City and Town Councils, the Board of Supervisors, and many stakeholder groups on the draft plan. The implementation of transportation programs and projects outlined the Expenditure Plan would benefit the citizens of Marin County.
- IV. The Expenditure Plan outlines a program for spending a one-half of one percent sales tax increase, which can only be spent on transportation purposes in Marin County. The Expenditure Plan, with a single goal that is supported by four implementation strategies, is designed to protect the environment and quality of life enjoyed in Marin County and to provide a high degree of accountability, while maintaining the flexibility needed to respond to emerging transportation issues over a 20-year period.
- V. Pursuant to the CEQA Guidelines Section 15378(b)(4), adoption of this retail transactions and use tax ordinance and Expenditure Plan does not qualify as a project subject to the requirements of CEQA.

## **SECTION 2. ADOPTION**

Now, therefore, based on the findings in Section 1 above, TAM does hereby ordain the adoption of the Expenditure Plan attached to this ordinance and identified as "Exhibit A."

Now, therefore, TAM does hereby further ordain adoption of a transactions and use tax ordinance as follows:

## **SECTION 3. TITLE**

This ordinance shall be known as the "TAM Transactions and Use Tax Ordinance."

## **SECTION 4. PERIOD OF TAX**

This ordinance is intended to impose and collect in Marin County a one-half of one percent transactions and use tax for transportation purposes. The tax authorized by this ordinance shall be imposed for a twenty-year period, beginning April 1, 2005 or as soon thereafter, as the tax may be lawfully imposed.

## **SECTION 5. PURPOSE**

The Board of Supervisors, the cities of \_\_\_\_\_ and the towns of \_\_\_\_\_ representing a majority of the cities and town in Marin County and a majority of the incorporated population have approved the Expenditure Plan as required by Public Utilities Code Section 180206(b). Pursuant to Public Utilities Code Section 180201, TAM requests the Board of Supervisors to call for a special election to be held on November 2, 2004 and submit a measure to the voters of Marin County for their approval which would, if so approved, authorize TAM to impose a one-half of one percent transactions and use tax for a period of twenty years and authorize TAM to issue limited tax bonds to finance the transportation improvements set forth in the 20-Year Expenditure Plan.

The purposes of this ordinance are as follows:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Revenue and Taxation Code Section 7251) of Division 2 of the Revenue and Taxation Code and Division 19 of the Public Utilities Code, which directs the Board of Supervisors to adopt the tax ordinance for voter approval, exercising the taxing power granted to TAM created by the Board of Supervisors by Resolution 2004-21 pursuant to Public Utilities Code Division 19.
- B. To adopt a retail transactions and use tax ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance which imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Retail Transactions and Use Tax.
- D. To adopt a retail transactions and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

- E. To improve, construct, maintain, and operate certain transportation projects and programs contained in the Expenditure Plan, which is incorporated herein by this reference and attached as "Exhibit A" to this ordinance, and as may be amended pursuant to applicable requirements.
- F. To set a maximum term of twenty years during which time this tax shall be imposed pursuant to the authority granted by Division 19 of the Public Utilities Code.

#### **SECTION 6. CONTRACT WITH STATE**

Prior to the operative date, TAM shall contract with the State Board of Equalization to perform functions incident to the administration and operation of this transactions and use tax; provided that, if TAM shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

#### **SECTION 7. TRANSACTIONS TAX RATE OF ONE-HALF OF ONE PERCENT**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in this County at the rate of one-half of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this County on and after the operative date. This tax shall be imposed for the maximum period of twenty years described in Section 4 herein.

#### **SECTION 8. PLACE OF SALE**

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

#### **SECTION 9. USE TAX RATE OF ONE-HALF OF ONE PERCENT**

An excise tax is hereby imposed on the storage, use, or other consumption in this County of tangible personal property purchased from any retailer on and after the operative tax date for storage, use, or other consumption in this County at the rate of one-half of one percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. This tax shall be imposed for the maximum period of twenty years described in Section 4 herein.

#### **SECTION 10. ADOPTION OF PROVISIONS OF STATE LAW**

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part I of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

## **SECTION 11. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES**

In adopting the provisions of Part I of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing agency, the name of TAM shall be substituted therefore. The substitution, however, shall not be made when the word State is used as part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California if the substitution would require action to be taken by or against the Authority or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance. The substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior borders of the State of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use, or other consumption remains subject to tax by the state under the said provisions of that code. The substitution shall not be made in Sections 6701, 6702, (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code. The name of the County shall be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 and in the definition of that phrase in Section 6203. A retailer engaged in business in the County shall not be required to collect use tax from the purchaser of tangible personal property unless the retailer ships or delivers the property into the County or participates within the County in making the sale of the property, including, but not limited to soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under authority of the retailer. "A retailer engaged in business in the County" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter I (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the County.

## **SECTION 12. PERMIT NOT REQUIRED**

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

## **SECTION 13. EXEMPTIONS, EXCLUSIONS, AND CREDITS**

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax gross receipts from:
  - 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside Marin County and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.
  - 2. Sales of property to be used outside the County, which is shipped to a point outside the County, pursuant to the contract of sale, by delivery to such point by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the County shall be satisfied:

- a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter I (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with 9840 of the Vehicle Code, by registration to an out-of-County address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his principal place of residence.
  - b. With respect to commercial vehicles by registration to a place of business out-of-county, and a declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
  4. A lease of tangible personal property which is a continuing sale of such property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
  5. For the purposes of subsections B.3 and B.4 above, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract upon notice, whether or not such right is exercised.
- C. There is exempted from the use tax imposed by this ordinance the storage, use, or other consumption in this County of tangible personal property:
1. Other than fuel or petroleum products, purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire of compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
  2. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
  3. If the possession of, or the exercise of any right or power over, tangible personal property under a lease, which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed prior to the operative date of this ordinance.
  4. For the purposes of subsection C.3 above, storage, use, or other consumption, or possession, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time during which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district or retailer imposing a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

## **SECTION 14. PROPOSITION**

There shall be proposed to the voters of Marin County the following proposition:

*Shall Marin County voters authorize implementation of a ½-cent transportation sales tax, issuance of tax bonds, and fix an appropriations limit not more than \$50 million, to implement a 20-year Transportation Plan including:*

- *Maintain and improve bus service, including special services for seniors and the disabled.*
- *Complete the Highway 101 carpool lanes through San Rafael.*
- *Maintain and improve roads, bikeways, and sidewalks.*
- *Reduce school-related congestion and provide safe access to schools.*

**Note:** *The above language is limited to 75 words. Word count is now at 74.*

## **SECTION 15. LIMITATION ON ISSUANCE OF BONDS**

The Authority is authorized to issue bonds to finance capital outlay expenditures. The maximum bonded indebtedness is limited by PUC Section 180250.

## **SECTION 16. USE OF PROCEEDS**

The proceeds of the taxes imposed by this ordinance shall be used solely for the projects and purposes set forth in the Expenditure Plan attached as "Exhibit A" and for the administration thereof.

## **SECTION 17. APPROPRIATIONS LIMIT**

For purposes of Article XIIIB of the State Constitution, the appropriations limit for the Authority for fiscal year 2004-05 and thereafter shall be \$50,000,000, unless that amount should be amended pursuant to applicable law.

## **SECTION 18. AMENDMENTS**

All amendments subsequent to the effective date of this ordinance to Part I of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall automatically become a part of this ordinance; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

## **SECTION 19. ENJOINING COLLECTION FORBIDDEN**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the state or TAM, or against any officer of the state or TAM, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

## **SECTION 20. EFFECTIVE DATE, PUBLICATION, AND SEVERABILITY**

The Transportation Authority of Marin does hereby further ordain the following:

1. Effective Date and Publication. This ordinance shall be, and is hereby declared to be, in full force and effect at the close of the polls on the day of election at which the proposition is adopted by two-thirds vote of the electors voting on the measure. A summary shall be published once before July 9, 2004 (15 days after its passage), with the names of the Commissioners voting for and against same, in the *Marin Independent Journal*, a newspaper of general circulation, published in the County of Marin.

2. Severability. If any term, provision, or portion of this ordinance is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining portions of this ordinance shall continue in full force and effect unless amended or modified by the County.

**SECTION 21. VOTE**

PASSED AND ADOPTED at a regular meeting of the Transportation Authority of Marin, on the 24th day of June, 2004 by the following vote to-wit:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

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STEVE KINSEY, CHAIR  
TRANSPORTATION AUTHORITY OF MARIN

ATTEST:

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Craig Tackabery  
Executive Director



"Exhibit A" is not included electronically on the website.  
Hard copies are available at TAM offices.